

There are several HIPAA related pieces of news below:

1) At our HIPAA Website [www.dmh.cahwnet.gov/hipaa2001/3.asp](http://www.dmh.cahwnet.gov/hipaa2001/3.asp) we have OHI's Kickoff Meeting invitation available. This meeting is for state and county participation only. Please contact Elaine Scordakis at (916) 651-8065 to register for this event:

Office of HIPAA Implementation (OHI):

Blue Print for HIPAA Success (pdf) (document available at the site)

Kickoff Meeting & Discussion of the HIPAA Assessment Tool

Nov 16, 2001 9:00 a.m. 714 P Street Auditorium

OHI HIPAA Assessment document (document available at the site)

2) In the ATTACHMENT, HIPAA Implementation Newsletter -- Issue #21 - November 2, 2001, please see the highlights related to Bill Braithwaite regarding schedules:

Security rule and Employer Identifier rule by December 31, 2001,

Health Plan Identifiers and Provider Identifiers should be published early in 2002

Draft regulation for electronic medical records for public review by the end of 2002

NPRM on Doctors First Report of Injury expected in 2002

"There is much work left to do" on the enforcement NPRM, release some time in 2002

Draft rule modifying Privacy Rule apparently on schedule for release December this year

Please be sure to note that in some cases the information presented may be the opinion of the original author. We need to be sure to view it in the context of our own organizations and environment. In some cases you may need legal opinions and/or decision documentation when interpreting the rules.

Many thanks to all who contributed to this information!!!

Have a great day!!!

Ken

Items included below are:

DHHS HIPAA FAQ's

Taxonomy Codes: Posting of NUCC Message

CHA Manual

[hipaalert] HIPAAlert-Lite 11/6/01 - ATTACHMENT

HIPAA Implementation Newsletter -- Issue #21 - Nov 2, 2001 - ATTACHMENT

DMH's laws and regulations addressing mental health

[hipaalive] General : Effective Date of Addendums

[hipaalive] GENERAL: California Confidentiality Laws Vs HIPAA

[hipaalive] Logging of Uses of PHI

[hipaalive] RE: GENERAL: HIPAA Presentations

[hipaalive] Delay in Rules?????

[hipaalive] ADMIN: Conference Announcements

\*\*\*\*\* DHHS HIPAA FAQ's

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Federal DHHS HIPAA FAQ Section is at the following links:

HIPAA FAQs - <http://aspe.hhs.gov/admnsimp/>  
Transaction & Code Set Standards - <http://aspe.hhs.gov/admnsimp/bannertx.htm>  
Privacy Standards - <http://aspe.hhs.gov/admnsimp/bannerps.htm>  
Security Standards - <http://aspe.hhs.gov/admnsimp/bannerps.htm#security>  
Identifier Standards - <http://aspe.hhs.gov/admnsimp/bannerid.htm>

\*\*\*\*\* Taxonomy Codes: Posting of NUCC Message

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PLEASE SEE ATTACHMENT

\*\*\*\*\* CHA Manual

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SEE ATTACHMENT.

Excerpt:

The attached flyer states that the Manual will be released in January. It will only cover Civil Code section 56 and the Health & Safety Code sections pertaining to patient access to medical records.

All the Welfare & Institutions Code sections that your dept. works with will be added in a planned second edition.

All the best to you in your big job--

Jana Aagaard

San Jose, CA

\*\*\*\*\* HIPAA Implementation Newsletter -- Issue #21 - November 2, 2001 \*\*\*\*\*

Please see the attachment. Several highlights include:

Bill Braithwaite regarding schedules:

Security rule and Employer Identifier rule by December 31, 2001,

Health Plan Identifiers and Provider Identifiers should be published early in 2002

Draft regulation for electronic medical records for public review by the end of 2002

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Draft rule modifying Privacy Rule apparently on schedule for release December this year

\*\*\*\*\* DMH's laws and regulations addressing mental health \*\*\*\*\*

DMH has just updated it Website related to accessing data related to:

Mental Health Records, Data Collection and Confidentiality

The purpose of these tables is to provide a convenient resource to identify laws and regulations addressing mental health records, data collection and confidentiality issues. Every effort has been made to reproduce accurate listings. These documents are information tools and are not meant to replace or represent an official record or source of information.

For additional information, please contact the appropriate state agency and/or:  
<http://www.dmh.ca.gov/hipaa2001>.

Please contact the DMH Office of Regulations with your comments or to report errors and omissions at: [Regs@dmhhq.ca.state.us](mailto:Regs@dmhhq.ca.state.us)  
<http://www.dmh.cahwnet.gov/admin/regulations>

\*\*\*\*\* [hipaalive] General : Effective Date of Addendums  
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\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

As with everything HIPAA, the answer to your question is a bit complex. In a separate post, Zon Owen has provided some background on the process currently underway regarding X12N's Implementation Guide Addenda.

The bottom line answer to your question, though, is that for the Addenda to be required for initial HIPAA Transactions and Code sets implementations, they must be incorporated into a final rule published in the Federal Register no later than 20 March 2002. [Note that this is a final rule, not the soon to be forthcoming notice of proposed rule making (NPRM); which is a necessary precursor to the final rule.]

March 20, 2002, is 210 days prior to 16 October 2002: the current compliance date for HIPAA Transactions and Code Sets [except for small Health Plans]. {45 CFR 162.900}

I calculated 210 days as follows.

=> The Implementation Guide Addenda have been determined to be a "modification" to a "standard or an implementation specification" that must be "adopted by the Secretary" [of the Department of Health and Human Services]. {45 CFR 160.103} As a modification, the "compliance date" for the Addenda may be "no earlier than 180 days after the effective date of the final rule in which the Secretary adopts the modification". {45 CFR 160.104 (c) (1)} Presumably, the Secretary will set the compliance date at precisely 180 days after adoption.

=> At this past October's X12 meeting [one month ago this week], representatives of the Centers for Medicare and Medicaid Services (CMS) reported that the rule for adopting the Implementation Guide

Addenda had been determined to be a "minor" change and, consequently, only a 30 day Congressional review period would be required following their receipt of the Federal Register-published final rule. Presumably there will be no delay in Congress' receipt of this final rule.

As Zon has indicated, there are many other factors and steps involved in the Addenda process. Our combined posts only hit the high spots. I hope they have answered your question.

Dave Feinberg  
Co-Chair, HIPAA Implementation Work Group  
Insurance Subcommittee (X12N)  
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\*\*\*\*\* [hipaalive] GENERAL: California Confidentiality Laws Vs HIPAA  
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\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

The California Healthcare Association is indeed planning a "matrix" or "crosswalk" of California confidentiality laws and HIPAA provisions as part of a larger Patient Privacy Manual. The plan is to have it out in January 2002. (Davis Wright Tremaine is the law firm producing the Manual.)

The first edition of the Manual will only consider two California laws--the Confidentiality of Medical Information Act (CA Civil Code section 56 et seq.) and the Health & Safety Code sections pertaining to patient access to medical records. The second edition will include more California confidentiality laws.

I have an electronic flyer for the Manual. It's too big a file to send via HIPAAlive, but if you'd like to write me off-list, I'll be happy to send it to you.

Jana Aagaard  
San Jose, CA  
[JanaFH@aol.com](mailto:JanaFH@aol.com)

\*\*\*\*\* [hipaalive] Logging of Uses of PHI  
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\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

The HIPAA privacy and security regulations contain two separate audit requirements (one each).

The disclosure accounting requirement is specified in the privacy regulation at ? 164.528. At first glance, this doesn't seem like an audit requirement since you only have to produce these records if the subject individual requests them. But if you look at ? 164.528(d)(1), you see that you are required to maintain the disclosure accounting log whether you receive requests for disclosure accounting or not. The six-year retention rule applies to the disclosure accounting log since the covered entity must satisfy request for an accounting of any and all disclosures that have occurred over the last six years.

The other audit requirement is contained in the security rule at ? 142.308(c)(1)(ii). This audit log is not kept in order to report disclosures to subject individuals but rather for intrusion/misuse detection purposes. The regulation does not specify the specific information that must be included in these records, just that these audit controls are "mechanisms employed to record and examine system activity." The six-year retention rule does not apply to this log. It doesn't seem very likely that a covered entity would be investigating suspicious system activity six years after the event.

Bye for now -- Harry

Harry E. Smith, CISSP  
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\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\* ing the Implementation Guide

We could also take a look at the guidance provided in the Privacy rule that differentiates between audit trails and accounting for disclosures.

- 1) The information required for accounting for disclosures is more than we would expect from an audit trail, but would capture uses for purposes not related to TPO.
- 2) We would not expect an audit trail to record all uses of the information (browses or views) - just alterations of the record.

See FR 82739

"Audit trails and the accounting of disclosures serve different functions. In the security field, an audit trail is typically a record of each time a sensitive record is altered, how it was altered and by whom, but does not usually record each time a record is used or viewed. The accounting required by this rule provides individuals with information about to whom a disclosure is made. An accounting, as described in this rule, would not capture uses. To the extent that an audit trail would capture uses, consumers reviewing an audit trail may not be able to distinguish between

accesses of the protected health information for use and accesses for disclosure. Further, it is not clear the degree to which the field is technologically poised to provide audit trails. Some entities could provide audit trails to individuals upon their request, but we are concerned that many could not. We agree that it is important to coordinate this provision of the privacy rule with the Security Rule when it is issued as a final rule."

Thanks  
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\*\*\*\*\* [hipaalive] GENERAL: HIPAA Presentations  
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\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

I would like to thank everybody for all their informative input. To all those interested I found a great FYI site " The Third National HIPAA Summit" :  
<http://www.hipaasummit.com/agenda/day2.html>. This site has many presentations and important data to download. Several participants from this thread were there 10/25/01 - 10/26/01, including Kepa Zubeldia, MD, and Phoenix Health Systems among others. Once again thankin you all for your help.

Steven J. Spataro

\*\*\*\*\* [hipaalive] HIPAA on Dictation system access by Physician  
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\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

The requirement for authentication is contained in the proposed security regulations. But the proposed security regulations would apply only to data that are electronically maintained or electronically transmitted [section 142.306(a)]. While there is no definition for "electronically maintained or electronically transmitted," I would not interpret the transmission of a voice recording over a telephone to meet the definition, even if the voice is recorded digitally. So I would see only the privacy regulations applying in this circumstance.

The privacy regulations do not have the same requirement, just a general requirement to implement reasonable safeguards. [section 164.530(c)] The CE is left to decide what constitutes "reasonable." Having said that, I believe that a CE will find it easier to defend its decision regarding safeguards if it uses some form of authentication for this kind of access to a dictation system.

Bill MacBain  
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\*\*\*\*\* [hipaalive] Delay in Rules????  
\*\*\*\*\*  
\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

Mic,

It is my understanding the State Medicaid Directors, the NGA, the Democratic Governor's Association, the Republican Governor's Association the National Association of Counties, the National League of Cities and the National State Legislatures Association have all weighed in in favor of a delay. Some, if not all, of these organizations weighed in before September 11th (if my recollection is correct).

The issue that was raised before September 11 (and now post to a greater extent) is a number of states are facing revenue shortfalls due to the economic downturn. The cost to complete HIPAA emendation is significant and it becomes a question funding safety net programs or HIPAA remediation (this is a bit simplistic - the issue is a bit more complex than that). Also, many state Medicaid information systems are rather antiquated making remediation all the more difficult.

It also needs to be noted that the American Medical Association, the American Association of Health Plans, the Blue Cross Blue Shield Association, among others, have weighed in supporting a delay. All this was prior to September 11th. I think you'll find organizations and associations on both sides of the issue of "to delay or not to delay." September 11th seems to exacerbated the situation for some but it did not start the delay debate.

Chris Apgar,  
Data Security & HIPAA Compliance Officer  
Providence Health Plan

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NOVEMBER:

HIPAA II Conference: Privacy, Security and Transaction Sets  
Potomac Forum, Ltd  
November 16, 2001  
Ronald Reagan Building and International Trade Center, Washington, DC  
<http://www.fedsources.com/cat/events/con-hipaa.asp>

Compliance in Medical Research and Academic Medical Centers Forum  
Health Care Compliance Association (HCCA)  
November 29 - 30, 2001  
Doubletree Hotel, Anaheim, CA

<http://www.hcca-info.org/documents/acad-comp.pdf>

DECEMBER:

HCCA/AHA HIPAA Forum  
Health Care Compliance Association (HCCA) and American Hospital Association (AHA)

December 3 - 5, 2001

Wyndham Plaza Hotel, San Diego, CA

<http://www.hcca-info.org/documents/hipaa-forum-broc-sd.pdf>

COMING UP IN 2002:

A series of Health Care EDI Seminars are being offered by the Data Interchange Standards Association (DISA) over the next several months in various locations throughout the U.S.

[http://www.disa.org/SeminarSeries\\_hcedi.cfm](http://www.disa.org/SeminarSeries_hcedi.cfm)

4th Annual International Techno-Security 2002 Conference (including a half-day HIPAA compliance seminar)

TheTrainingCo.

April 7 - 10, 2002

Wyndham Myrtle Beach Resort, Myrtle Beach, SC

<http://www.techsec.com/html/HIPAA.html>

\*\*\*\*\* [hipaalive] TCS: DDE vs. EDI (one or both required)

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\*\*\* This is HIPAAlive! From Phoenix Health Systems \*\*\*

Health plans are required to conduct all HIPAA standard transactions when requested to do so [Section 162.925(a)(1)]. The standard transactions are defined in the regulations (ASC X12 or NCPDP). So if a health plan refused to conduct a transaction that met the applicable standard, it would be in violation, even if it offered a DDE alternative.

Health plans may not adversely affect a transaction because it is a standard transaction [Section 162.925(a)(2)]. Requiring use of DDE in lieu of conducting the transaction in standard format would probably adversely affect the transaction, from the provider's point of view.



"A health plan may not offer an incentive for a health care provider to conduct a transaction covered by this part as a transaction described under the exception provided for in Section 162.923(b)." [Section 162.925(a)(4)] The cited exception is the provision that permits DDE. Telling a provider that its electronic claim won't be processed unless it submits via DDE seems like an extreme incentive.

Conclusion: The DDE exception is intended to allow health plans to offer, and providers to take advantage of, provider-to-payor DDE in addition to, but not instead of, the standard transactions.

Please do not try to diagram the preceding sentence. And no, I am not a lawyer.

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